

Can a Victim Press Criminal Charges?

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Unlike what you see on TV, the decision to press charges doesn't necessarily rest with the victim. The prosecutor makes the final call on whether to press charges. But the victim's willingness to testify and cooperate with police and prosecutors can be crucial to seeing justice done.

What Does It Mean to Press Charges?

To press criminal charges means to file a criminal complaint against someone believed to have committed a crime. These charges might allege someone committed an assault, damaged property, bribed an official, or stole money. The charges state the crime(s) committed, who allegedly committed it (the defendant), and the penalties for the offense.

The phrase "pressing charges" gets thrown around a lot. And while every state is different, generally, pressing charges refers to a sequence of actions where:

- a victim or someone else reports a crime to the police
- the police investigate and search for evidence of the crime, and
- the prosecutor reviews the allegations and evidence and decides whether to file a criminal complaint.

The prosecutor, in the end, makes the final decision of whether to press charges, but victims, witnesses, and police play a part in the process.

Pressing Criminal Charges: How It Works

The path to pressing criminal charges can be longer than one might expect. A victim doesn't simply walk into a police station and ask to press charges against someone. And it's unlikely that police will immediately arrest and charge the suspect upon receiving the victim's statement. Unless the police observe the crime, they will need to gather evidence and other information to recommend that the prosecutor charge the person with a crime. Let's review.

Path of a Typical Arrest

In the typical scenario, a crime victim contacts the police, and the police come to the scene or meet with the victim and ask for information. If the suspect is at the scene and the offense just occurred, the police may be able to arrest the suspect immediately but only if the police have "probable cause"—a reasonable belief that a crime has occurred and the arrestee did it. If the suspect isn't at the scene, the police will usually need an arrest warrant, issued by a judge, before they take the suspect into custody. The police must gather information and evidence and determine whether probable cause exists for an arrest warrant.

In other cases, a victim might file a police report alleging that a crime was committed against them. Similar to the above scenario, the police might need additional evidence to obtain an arrest warrant for the suspect.

Determination of Probable Cause

Probable cause doesn't have an exact definition. Basically, it means the police believe reasonable grounds exist for concluding that a crime occurred and the accused committed it. The police can consider various types of evidence and information in determining whether probable cause exists to arrest someone, including:

- statements of the victim or witnesses who saw or heard events
- statements of the person accused of committing the crime
- physical evidence, such as a weapon or property damage at the crime scene
- evidence of physical injuries to the victim, and
- video or audiotape of the incident.

This evidence—if sufficient to establish probable cause—will support an arrest or a request for an arrest warrant.

If the police don't arrest the offender but have evidence of a misdemeanor or petty crime (less serious offenses than a felony), the police can file a criminal complaint or another charging document in court. This document will be mailed to the defendant and requires the defendant to appear in court and answer the charges. With more serious charges (felonies), the police will send the evidence to the prosecutor.

Roles of the Prosecutor and Grand Jury in Charging Decisions

A prosecutor reviews the police report and determines whether the government can proceed with the charges. The prosecutor must determine whether the government can, with the available evidence, prevail at trial. To win at trial, the prosecutor must prove beyond a reasonable doubt—a standard of proof much higher than probable cause—that the accused committed the crime. Prosecutors have a duty to

seek justice, not convictions. If the evidence doesn't support a conviction, the prosecutor should not file charges.

In some states, the prosecutor files criminal charges against the defendant, which must then be reviewed by a judge. The judge provides a second set of eyes to prevent the filing of unfounded charges. This review hearing is often referred to as a probable cause or preliminary hearing. Other states require the prosecutor to present the evidence to a grand jury, which will decide if enough evidence exists to proceed to trial. If so, the grand jury issues an indictment (in-DITE-ment), which formally charges the accused and starts the criminal trial.

Role of the Victim in Pressing Charges

In determining whether to pursue a case, the prosecutor will consider the victim's statements and expected level of cooperation. A victim cannot force or require the prosecutor to pursue a case, but the prosecutor is more likely to pursue criminal charges if the victim is cooperative.

The unwilling prosecutor. In some cases, a victim might want to pursue criminal charges but the prosecutor may determine a crime wasn't committed or not enough evidence exists to prevail at trial, even with the victim's testimony. While this outcome can be very frustrating for the victim, the victim doesn't have the authority to make a final decision about prosecution (except in very limited circumstances that are explained below).

The unwilling victim. On the flip side, a victim might be against pressing charges. This scenario can be common in domestic violence cases. The prosecutor may take the victim's unwillingness or refusal to testify into account, but ultimately, the prosecutor can pursue the case even if the victim objects.

Can the Prosecutor Force a Victim to Testify in a Criminal Case?

Prosecutors can use their subpoena power to force a victim to testify (absent the victim claiming the Fifth). If the person ignores the subpoena, refuses to testify, or doesn't appear at trial, the judge can issue a bench warrant (like an arrest warrant).

While a prosecutor usually can compel attendance and testimony using a subpoena, the value of a reluctant or hostile witness is debatable. Victims might change or recant their testimony at the last minute and claim to have been mistaken. In any event, putting an angry or hostile witness on the stand can backfire and affect the jury's belief in the case. In some cases, the prosecutor can decide to proceed with a trial without the victim's testimony.

Other evidence in the case, such as eyewitness testimony or physical evidence, might be enough to establish the defendant's guilt.

What Happens After a Decision to Press Charges?

Filing criminal charges sets the wheels of criminal justice in motion. For serious charges, the prosecutor might ask for a warrant to secure the defendant's arrest. The police will bring the defendant to jail and start the booking process (fingerprints, booking photos, etc). A bail hearing must be held shortly. In less serious cases, the defendant might receive notice of the criminal charges through a summons and notice to appear before the court. Learn more about the Steps in a Criminal Case—Arrest to Appeal.

Do Private Criminal Complaints Exist?

A few states allow private persons to file criminal complaints or charges against others for minor (petty) or misdemeanor crimes (like trespassing or simple battery) without the police or the prosecutor's office being involved. Similarly, some states allow "private prosecutors" to try criminal cases in certain instances.

But, even in states that allow it, it's rare to see private charging and prosecutions. Courts strictly limit its use out of concerns that private prosecution can turn into a means of revenge. As noted above, the role of the public prosecutor is to seek justice, not to merely convict. A prosecutor must objectively review the evidence and make other objective decisions that can be difficult for a crime victim to step back and take.

Legal Representation

If you believe you've been the victim of a crime but the prosecutor or police refuse to pursue the case, contact a local attorney for a consultation about your rights and options. An attorney might suggest hiring a private investigator to seek out additional evidence or have other suggestions.

Likewise, if you receive a subpoena to testify in a criminal trial and have concerns, an attorney can advise you of your rights and appear in court with you, if necessary. It's never advisable to ignore correspondence from a prosecutor or district attorney's office or a subpoena without consulting with an attorney.

Safety and Privacy Considerations for Victims

Be sure to consider the privacy of your computer, smartphone, or tablet when seeking help online or over the phone. Some victims might use the same device, network, or phone plan as the abuser, allowing the abuser to see the victim's search or call history or otherwise track their activity. Many smart devices contain cameras or GPS tracking that can be used to locate and monitor your whereabouts. An abuser can even slip a small tracking device into your car, bag, pocket, or other belongings without your knowledge. If you're concerned about your privacy or safety, several organizations provide assistance and resources, including National Domestic Violence Hotline and RAINN. You can also check out our Resources for Victims of Crime.

<https://www.criminaldefenselawyer.com/resources/criminal-defense/criminal-offense/pressing-charges-a-criminal-act.htm>